

## ESTATE OF GEORGE NECONIE

IBIA 87-47

Decided April 21, 1988

Appeal from an order denying reopening issued by Administrative Law Judge Sam E. Taylor in Indian Probate No. 12314-47, IP OK 220 P 84.

Affirmed.

1. Indian Probate: Appeal: Generally--Indian Probate: Reopening: Generally

The appellant bears the burden of proving the error of the decision from which the appeal is taken.

2. Indian Probate: Witnesses: Observation by Administrative Law Judge

Where evidence is conflicting, the Board of Indian Appeals normally will not disturb a decision based upon findings of credibility when the Administrative Law judge had an opportunity to hear the witnesses and to observe their demeanor.

3. Indian Probate: Appeal: Matters Considered on Appeal

The Board of Indian Appeals is not required to consider arguments or evidence raised for the first time on appeal.

APPEARANCES: Georgie Neconie Tewes, pro se.

### OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

On August 26, 1987, the Board of Indian Appeals (Board) received a notice of appeal from Georgie Neconie Tewes (appellant). Appellant sought review of a June 22, 1987, order denying reopening entered in the estate of George Neconie (decedent) by Administrative Law Judge Sam E. Taylor. For the reasons discussed below, the Board affirms that order.

#### Background

Decedent, an unallotted Kiowa Indian, died intestate on May 1, 1945, at the age of 37 years, while serving with the United States Armed Forces in

Okinawa. A hearing to ascertain decedent's heirs was held on November 19, 1946, by Examiner of Inheritance Robert J. Montgomery. As a result of testimony given at that hearing, decedent's heirs were determined to be his wife, Ethel Ware Neconie, and two surviving children, Adalene Neconie and Carmelita Neconie.

On June 25, 1984, appellant filed a petition to reopen decedent's estate for the limited purpose of determining that she was decedent's natural daughter. Appellant specifically disclaimed any interest in altering the original distribution of decedent's trust or restricted estate. Instead, she stated she was interested only in a determination of paternity for the purpose of determining her own Indian blood quantum. See Estate of Edward (Agopetah) Bert, 12 IBIA 253, 91 I.D. 235 (1984). Appellant was represented by counsel throughout the hearing before Judge Taylor.

Appellant submitted documentary evidence in the form of school records and a birth certificate, each listing decedent as her father. <sup>1/</sup> In addition, testimony was given by several of appellant's relatives, who stated that decedent had acknowledged appellant as his daughter. This testimony was disputed by Adalene Neconie Gallegos, decedent's sole surviving heir.

By order dated June 22, 1987, Judge Taylor determined that appellant had not proven by a preponderance of the evidence that decedent was her natural father. Accordingly, he denied the petition to reopen.

The Board received appellant's appeal from this determination on August 26, 1987. The probate record was received from the Anadarko Land Titles and Records Office, Bureau of Indian Affairs, on September 28, 1987. By notice of docketing dated September 30, 1987, the Board established a briefing schedule. No briefs were filed.

### Discussion and Conclusions

[1] On appeal, appellant bears the burden of showing the error in the decision from which she is appealing. Estate of Charles James Roane, 14 IBIA 265 (1986); Estate of Woody Albert, 14 IBIA 223 (1986); Estate of Eastman John Kipp, 13 IBIA 242 (1985); Estate of Fred Redstone, Sr., 13 IBIA 44 (1984). Because she submitted nothing else, appellant must sustain her burden of proof through the notice of appeal.

[2] Appellant's notice of appeal repeats matters raised and discussed by Judge Taylor, suggests that other people could have been subpoenaed to give testimony, and recounts an incident not mentioned during the hearing, apparently to show that decedent's surviving spouse had knowledge of a

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<sup>1/</sup> The school records list decedent as appellant's father and show that decedent and appellant's mother were divorced. There is no contention in this case that decedent and appellant's mother were ever married. In the space for father on appellant's birth certificate, the words "Name given as father is" have been written on the certificate.

relationship between decedent and appellant's mother. As to the issues raised to Judge Taylor, appellant presents no reasons sufficient to justify reversing the Judge's decision. The evidence in this case was conflicting. Judge Taylor's decision was, therefore, based in large part upon his observation of the demeanor of the witnesses as they testified. The Board has previously held that the Judge's determination of witness credibility will normally not be disturbed. Estate of Joseph Kicking Woman, 15 IBIA 83 (1987); Estate of John Walter Few Tails, 13 IBIA 127 (1985). Appellant's arguments provide no reason to depart from this precedent.

[3] Appellant's new evidence and witnesses could and should have been presented at the hearing before Judge Taylor. The Board is not required to consider evidence and arguments raised for the first time on appeal. Estate of Glenn Begay, 16 IBIA 115 (1988); Estate of Virginia Enno Poitra, 16 IBIA 32 (1988); Estate of Ella Dautobi, 15 IBIA 111 (1987), aff'd, Domebo v. Hodel, No. CIV-87-844-W (W.D. Okla. Mar. 18, 1988). Again, appellant has presented no reason sufficient to justify allowing the introduction of new evidence and witnesses on appeal.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the June 22, 1987, decision of Judge Taylor is affirmed. 2/

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Kathryn A. Lynn  
Chief Administrative Judge

I concur:

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Anita Vogt  
Administrative Judge

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2/ This decision does not affect the Dec. 5, 1984, decision of the Kiowa Business Council to amend tribal records to show appellant as a full blood Kiowa, based upon its independent determination that decedent was appellant's natural father.